

Rules and Regulations Governing the Lawyer Assistance Program

Scope and Purpose

The Lawyer Assistance Program ("Program") was established by the Legislature as a means of identifying and rehabilitating attorneys with impairments due to the abuse of drugs or alcohol, or due to mental illness.

Pursuant to the Business & Professions Code section 6231, the board will establish a committee to oversee the operation of the Lawyer Assistance Program. Section 6231 (c) further provides that with the approval of the State Bar's Board of Governors "the committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program."

Rule I

Oversight Committee: General Powers

Section 1. The oversight committee appointed by the State Bar of California, the Governor, the Speaker of the Assembly and the Senate Rules Committee pursuant to the provisions of the State Bar Act will be known as the Lawyer Assistance Program Oversight Committee ("Committee")

Section 2. The members of the Committee will serve terms of four (4) years and may be reappointed as many times as desired. The board will stagger the terms of the initial members appointed.

Section 3. The Committee will, on an annual basis, submit to the Board its recommendation for the appointment of a Chair and Vice-Chair, selected from among its members by a majority vote of the members appointed and sitting.

Section 4. Meetings of the Committee may be held at such places in California and at such times as may be fixed by the Committee. Meetings may also be held at the offices of the State Bar, either in San Francisco or Los Angeles, at the call of the Chairperson or the Vice-Chairperson. Notice of the time and place of all meetings will be given in accordance with the Board of Governors of the State Bar of California's Policies Governing Open Meetings, Closed Sessions, and Records of Regulatory Committees.

Section 5. For the transaction of business, a quorum of the Committee will consist of one-half of all members appointed and sitting, plus one. However, less than that number may adjourn from day to day.

Section 6. The Committee is empowered to appoint subcommittees to facilitate the purpose and administration of these Rules. The Committee may act in any matter by a subcommittee composed of not less than two Committee members.

Section 7. Subject to the approval of the Board of Governors, the Committee may adopt reasonable rules and regulations as may be necessary or advisable for the purpose of implementing and operating the Program.

Section 8. The Committee will establish practices and procedures for the acceptance, denial, completion, or termination of attorneys participation in the Program, and it may recommend rehabilitative criteria for adoption by the Board of Governors.

Section 9. Written notice may be given by personal service or sent by mail, postage prepaid, addressed to the participant at the participant's official membership records address, and if sent by mail, will be deemed to have been received by the addressee five (5) days after deposit in the mail if the address is within the State of California, ten (10) days after deposit in the mail if the address is outside the State of California but within the United States, and twenty (20) days after deposit in the mail if the address is outside the United States.

Section 10. Unless specified otherwise in these rules, any forms, letters, applications or documents will be deemed filed with the Committee at the earlier of the following:

- (a) When actually received in substantially complete form as defined by the Committee, by the Committee at the State Bar offices in either San Francisco or Los Angeles;
- (b) On the date of the first postmark thereon if the form, letter, application or document is substantially complete as defined by the Committee and was placed in the United States mail postage prepaid and addressed to the Committee at either the State Bar's San Francisco or Los Angeles Offices.

Rule II
Eligibility for Admission to the Lawyer
Assistance Program: General Requirements

Section 1. Any attorney may voluntarily enter the Program, for treatment purposes, on a confidential basis. Confidentiality pursuant to this section will be absolute unless waived in writing by the attorney.

Section 2. An attorney currently under investigation by the State Bar or following the initiation of a disciplinary proceeding, may also enter the Program by:

- (a) referral of the Office of Chief Trial Counsel;
- (b) by referral of the State Bar Court;

Section 3. Acceptance into, or participation in, the Program will not relieve an attorney who voluntarily enters the Program while under investigation, or following the initiation of a disciplinary proceeding, of any lawful duties or obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders, or applicable statutes relating to attorney discipline.

Rule III **Administrative Costs and Fees**

Section 1. Attorneys will be responsible for payment of all expenses relating to treatment and recovery, including but not limited to the costs of hospitalization, drug testing, group meetings, individual therapy, etc.

Section 2. A reasonable administrative fee may also be charged to attorneys for the purpose of offsetting the costs of administering the Program.

Section 3. To ensure that no member attorney is denied acceptance into the Program solely due to the lack of ability to pay, member attorneys may apply for financial assistance from the fund established for this purpose by the State Bar.

Section 4. Former members may apply to participate in the Program. Former members are not eligible for program sponsored financial assistance.

Rule IV **Confidentiality**

Section 1. An attorney who is not the subject of a current investigation may voluntarily enter the Program on a confidential basis. This confidentiality will be absolute unless waived by the attorney.

Section 2. Any information provided to or obtained by the Program, or any subcommittee or agent thereof, will be:

- (a) confidential, and this confidentiality will be absolute unless waived in writing by the attorney;
- (b) exempt from the provisions of Business and Professions Code section 6086.1;
- (c) not discoverable and/or not admissible in any civil proceeding, without the written consent of the attorney to whom the information relates;
- (d) not discoverable and/or not admissible in any disciplinary proceeding, without the written consent of the attorney to whom the information relates to;
- (e) except with respect to the provisions of subsection (c) of Business and Professions Code section 6231, the limitations on the disclosure and admissibility of information set forth in this section will not apply to information relating to an attorney's failure to

cooperate with the Program, or with an attorney's unsuccessful completion of the Program.

Rule V
Impact on Discipline

Section 1. Acceptance into or participation in the Program will not relieve the attorney of any lawful duties and obligations otherwise required by any agreements or stipulations with the Office of the Chief Trial Counsel, court orders and applicable statutes relating to attorney discipline.

Section 2. The extent to which an investigation is terminated, formal charges are dismissed, or the level of discipline is reduced as a result of an attorney's participation in the Program, will be entirely dependant upon the terms of the attorney's agreement with the Office of the Chief Trial Counsel or the decisions or orders issued by the State Bar Court.

PROPOSED CRITERIA FOR ACCEPTANCE, DENIAL, COMPLETION OF, OR TERMINATION FROM THE LAWYER ASSISTANCE PROGRAM ("LAP")

Pursuant to Business & Professions Code section 6232(a): "The committee . . . may recommend rehabilitative criteria for adoption by the board for acceptance, denial, completion of, or termination from, the program."

I. Criteria for Acceptance

An applicant shall meet the following criteria for acceptance into the Program:

1. The applicant shall be an active or inactive member, or former member of the State Bar of California;
2. The applicant shall be found to have a substance-related disorder or a mental health disorder;
3. The applicant shall voluntarily agree to participate in the Program;
4. The applicant shall agree in writing to comply with all of the elements of the participation agreement; and
5. The applicant shall cooperate with the Program by providing access to medical information, disclosure authorizations and releases of liability as may be necessary for participation in the Program.

II. Criteria for Denial

An applicant may be denied participation in the Program in cases where any of the following conditions exist:

1. The applicant does not meet the criteria for acceptance into the Program;
2. The applicant will not substantially benefit from participation in the Program; and
3. The applicant's participation in the Program is inconsistent with the Program's mission of public protection.

III. Criteria for Completion

Participants will be deemed to have completed the Program when all of the following conditions have been met:

1. The participant has maintained three years of continuous sobriety or, in cases of mental health, stability;
2. The participant has made lifestyle changes sufficient to maintain ongoing recovery or stability;
3. The participant has satisfied the terms of the participation agreement; and
4. The participant has participated in the Program for a period of five years, or as otherwise deemed appropriate by the Evaluation Committee.

IV. Criteria for Termination

Participants may be terminated from Program participation when any of the following conditions exist:

1. The participant has failed to comply with the participation agreement, including but not limited to:
 - (a) Failure to comply with the prescribed monitoring or treatment recommendations, or
 - (b) Use of alcohol or other unauthorized drug;
2. Any cause for denial of participation; and
3. Failure to meet the criteria for acceptance to the Program.

LAWYER ASSISTANCE PROGRAM
GROUP FACILITATOR FEES

Excerpted from the March 9, 2002 minutes of the Lawyer Assistance Oversight Committee:

It was moved, seconded and duly carried that the Lawyer Assistance Program Oversight Committee hereby adopts these Group Facilitator fees and directs that a provision be made for future fee increases.

\$315/month Participants attending group meetings twice each week.

\$220/month Participants attending group meetings once each week.